

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

RANDALL S. KRAUSE,	)	<b>CASE NO. 8:15-cv-197</b>
	)	
Plaintiff,	)	
v.	)	<b>MOTION TO DISMISS</b>
	)	
CITY OF OMAHA,	)	
	)	
Defendant.	)	

COME NOW the Defendant, the City of Omaha (“City”), pursuant to Fed. R. Civ. P. 12(b)(6), and move the Court for an order dismissing the Plaintiff’s Complaint made against the City for the following reasons:

1. The Plaintiff has failed to state a claim upon which relief can be granted. The Resource Conservation and Recovery Act does not extend to municipal application of road salt on public streets for the purpose of snow and ice control in furtherance of the public health, safety, and welfare, nor does the definition of solid waste enumerated in 42 U.S.C. § 6903(27) extend to application of road salt on public streets. The Plaintiff’s claim should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, the City of Omaha prays for an order of the Court dismissing the Plaintiff’s Complaint (Doc. # 1) for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted this 6<sup>th</sup> day of July, 2015.

CITY OF OMAHA, Defendant

By: s/ Ryan J. Wiesen

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2015, I electronically filed the foregoing **MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties and attorneys of record in the above captioned case registered with the system. I further certify that a true and accurate copy of the foregoing document was sent via first class mail, postage prepaid, to Randall S. Kruse, 604 S. 22<sup>nd</sup> Street, Apt. 515, Omaha, Nebraska 68102.

s/ Ryan J. Wiesen